Supreme Court, U.S.
FILED
JUL 16 1999
OFFICE OF THE CLERK

(2)

No. 98-1850

IN THE SUPREME COURT OF
THE UNITED STATES

October Term 1998

J.F., A Minor,
Petitioner

vs.

COMMONWEALTH OF PENNSYLVANIA,
Respondent

On Petition for a Writ of Certiorari to
the Supreme Court of Pennsylvania.

BRIEF FOR RESPONDENT

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ARGUMENT

A. THE MAJORITY HOLDING DISTILLED FROM THE PLURALITY AND CONCURRING OPINIONS OF McKEIVER v. PENNSYLVANIA IS DECISIVE AUTHORITY TO THE PRESENT CASE.

In McKeiver v. Pennsylvania, 403 U.S. 528, 91 S. Ct. 1976, 29 L.Ed.2d 647 (1971), this Honorable Court rejected a challenge to Pennsylvania's Juvenile Act. The Court held that there is no constitutional right to a jury trial in the adjudicative stage of Pennsylvania's juvenile proceedings. The Petitioner contends that McKeiver is not binding authority because no single rationale could command a majority of the justices. (Petition for Writ of Certiorari at 8).

> When a fragmented Court decides a case and no single rationale explaining the result enjoys the assent of five Justices, "the holding of the Court may be viewed as that position taken by those Members who concurred in the judgments on the narrowest grounds . . . ."

Marks v. United States, 430 U.S. 188, 193, 97 S. Ct. 990, 993, 51 L.Ed.2d 260 (1977) (quoting Gregg v. Georgia, 428 U.S. 153, 169 n.15, 96 S. Ct. 2909, 2923, 49 L.Ed.2d 859 (1976)).

The position taken by five Justices in the McKeiver case definitively resolves the question at issue. The plurality opinion of Justice Blackmun, joined by Chief Justice Burger, and Justices Stewart and White, and the concurring opinion of Justice Brennan each address two separate questions: (1) Whether a juvenile adjudication hearing is a criminal proceeding within the meaning of the Sixth and Fourteenth Amendments to the United States Constitution? (2) Does fundamental fairness require the right to a jury trial in a juvenile adjudication proceeding? The plurality opinion and Justice Brennan's concurring opinion answered both of these questions in the negative. McKeiver, 403 U.S. at 550, 553-56, 91 S. Ct. at 1989-92. While Justice Brennan reached this conclusion finding that a public trial was an adequate substitute for a jury trial, his essential position was that fundamental fairness did not require a jury trial in the context of juvenile adjudication. This essential position was common to Justice Blackmun's opinion which was joined by three other Justices. This common holding is easily discerned and applied by state courts. As discussed infra, the reasoning of McKeiver is equally applicable to Pennsylvania's current Juvenile Act and should not be disturbed.

B. ADJUDICATION HEARINGS UNDER PENNSYLVANIA'S JUVENILE ACT ARE NOT CRIMINAL PROCEEDINGS WITHIN THE MEANING OF THE SIXTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION.

Since the right to a jury trial is constitutionally required in criminal proceedings, the initial question is whether juvenile adjudications are criminal proceedings. "The categorization of a particular proceeding as civil or criminal 'is first of all a question of statutory construction.'" Kansas v. Hendricks, 521 U.S. 346, ___, 117 S. Ct. 2072, 2081, 138 L.Ed.2d 501, ___ (1997), (quoting Allen v. Illinois, 478 U.S. 364, 368, 106 S. Ct. 2988, 2992, 92 L.Ed.2d 296, ___ (1986)). "We must initially ascertain whether the Legislature meant the statute to establish 'civil' proceedings. If so, we ordinarily defer to the Legislature's stated intent." Id., 117 S. Ct. at 2081-82.[1] The Pennsylvania General Assembly has exhibited a clear intention to make juvenile proceedings non-criminal, just as the Kansas Legislature did by placing its Sexually Violent Predator Act outside the Criminal Code. The Juvenile Act is contained in the Judiciary Code and is separate from the Sentencing Code and the

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[1] While this Honorable Court's analysis in Hendricks interpreted what constituted a criminal proceeding for purposes of the Double Jeopardy Clause and Ex Post Facto Clause, its interpretation is equally applicable to the Sixth Amendment.

Crimes Code. 42 Pa.C.S. Chapter 63. Throughout the Act, the Legislature refers to "delinquent acts" rather than crimes. 42 Pa.C.S. §6302. The Act refers to transfer to criminal proceedings from juvenile proceedings. 42 Pa.C.S. §6355. The Act specifically does not apply to criminal proceedings. 42 Pa.C.S. §6355(b). Throughout the Act, juveniles are referred to as children. The clear intention of the General Assembly was to create juvenile proceedings that were non-criminal in nature.

This Honorable Court will reject a Legislature's intent to create a civil proceeding

> only where a party challenging the statute provides "the clearest proof" that "the statutory scheme [is] so punitive either in purpose or effect as to negate [the State's] intention" to deem it "civil."

Kansas v. Hendricks, 117 S. Ct. at 2082, (quoting United States v. Ward, 448 U.S. 242, 248-49, 100 S. Ct. 2636, 2641, 65 L.Ed.2d 742 (1980)). The purposes of Pennsylvania's Juvenile Act are clearly not punitive.

> This chapter shall be interpreted and construed as to effectuate the following purposes;
>
> (1) To preserve the unity of the family whenever possible and to provide for the care, protection, and

wholesome mental and physical development of children coming within the provisions of this chapter.

(2) Consistent with the protection of the public interest, to provide for children committing delinquent acts programs of supervision, care and rehabilitation which provide balanced attention to the protection of the community, the imposition of accountability for offenses committed and the development of competencies to enable children to become responsible and productive members of the community.

(3) To achieve the foregoing purposes in a family environment whenever possible, separating the child from parents only when necessary for his welfare or in the interest of public safety.

(4) To provide means through which the provisions of this chapter are executed and enforced and in which the parties are assured a fair hearing and their constitutional

> and other legal rights
> recognized and enforced.

42 Pa.C.S. §6301(b). Thus, the stated purpose of the Juvenile Act confirms the legislative intent to make juvenile matters non-criminal.

Likewise, the effect of juvenile adjudication hearings reflects its non-criminal nature.

> If the child is found to be a delinquent child, the court may make any of the following orders of disposition determined to be consistent with the protection of the public interest and best suited to the child's treatment, supervision, rehabilitation, and welfare, which disposition shall, as appropriate to the individual circumstances of the child's case, provide balanced attention to the protection of the community, the imposition of accountability for offenses committed and the development of competencies to enable the child to become a responsible and productive member of the community:
>
> (1) Any order authorized by Section 6351 (relating to disposition of dependent child).
>
> (2) Placing the child on probation under the supervision of the probation officer of the

court or the court of another state as provided in Section 6363 (relating to ordering foreign supervision), under conditions and limitations the court proscribes.

(3) Committing the child to an institution, youth development center, camp, or other facility for delinquent children operated under the direction or supervision of the court or other public authority and approved by the Department of Public Welfare.

(4) If the child is 12 years of age or older, committing the child to an institution operated by the Department of Public Welfare.

(5) Ordering paying by the child of reasonable amounts of money as fines, costs, or restitution as deemed appropriate as part of the plan of rehabilitation considering the nature of the acts committed and the earning capacity of the child. For an order made under this subsection, the court shall retain jurisdiction until there has been full compliance with the order or until the

delinquent child attains 21 years of age. Any restitution order which remains unpaid at the time the child attains 21 years of age shall continue to be collectible under Section 9728 (relating to collection of restitution, reparation, fees, costs, fines and penalties).

(6) An order of the terms of probation may include an appropriate fine considering the nature of the act committed or restitution not in excess of actual damages caused by the child which shall be paid from the earnings of the child received through participation in a constructive program of service or education acceptable to the victim and the court whereby, during the course of such service, the child shall be paid not less than the minimum wage of this Commonwealth. In ordering such service, the court shall take into consideration the age, physical and mental capacity of the child and the service shall be designated to impress upon the child a sense of responsibility for the injuries caused to the person or property of another. The order of the court shall be

limited in duration consistent with limitations in Section 6353 (relating to limitation on and change in place of commitment) and in the Act of May 13, 1915 (P.L. 286, No. 177), known as the Child Labor Law. The court order shall specify the nature of the work, the number of hours to be spent performing the assigned tasks, and shall further specify that as part of a plan of treatment and rehabilitation that up to 75% of the earnings of the child be used for restitution in order to provide positive reinforcement for the work performed.

In selecting from the alternatives set forth in this section, the court shall follow the general principle that the disposition imposed should provide the means through which the provisions of this chapter are executed and enforced consistent with Section 6301(b) (relating to purposes) and when confinement is necessary, the court shall impose the minimum amount of confinement that is consistent with the protection of the public and the rehabilitation needs of the child.

42 Pa.C.S. §6352(a). These effects of juvenile adjudication are wholly different from the effects of a criminal conviction which carries a stigma and the possibility of lengthy incarceration. The effects of adjudication are non-punitive, with an emphasis on rehabilitation and care of the wayward child.

The Petitioner points to the 1996 amendments to the Juvenile Act which provides for criminal prosecution of juveniles accused of first degree felonies where the juvenile had previously been adjudicated delinquent for such a felony. (Petition for Writ of Certiorari at 14). Automatic prosecution as an adult in criminal proceedings cannot be regarded as a consequence of juvenile adjudication. This is merely a prospective consequence if the juvenile reoffends. This provision, 42 Pa.C.S. §6302, limits the applicability of the Juvenile Act and leaves the prosecution recidivist to criminal proceedings. Overall, the effects of juvenile adjudication hearings do not compel rejection of the legislative intent to make adjudication hearings non-criminal.

C. FUNDAMENTAL FAIRNESS DOES NOT REQUIRE THE RIGHT TO A JURY TRIAL IN JUVENILE ADJUDICATION HEARINGS.

The due process standard applicable to juvenile proceedings is fundamental fairness. McKeiver, 403 U.S. at 543, 91 S. Ct. at 1985; In the Matter of Winship, 397 U.S. 358, 90 S. Ct. 1068, 25 L.Ed.2d 368 (1970). Fundamental

fairness does not require the right to a jury trial in juvenile proceedings.

> There is a possibility, at least, that the jury trial, if required as a matter of constitutional precept, will make the juvenile proceeding into a full adversary process and will put an effective end to what has been the idealistic prospect of an intimate, informal protective proceeding.

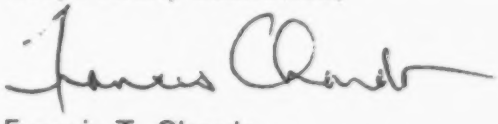
McKeiver, 403 U.S. at 545, 91 S. Ct. at 1986. The present Juvenile Act requires that hearings be conducted in an informal but orderly manner. 42 Pa.C.S. §6336. Informal adjudication hearings are fundamentally fair. By shielding the child from the harshness of a fully adversary process, informal hearings benefit the juvenile. The introduction of jury trials to the juvenile proceedings will necessarily make it formalistic and adversarial. Extending the right to a jury to juvenile proceedings will substitute one measure of fairness for another.

Although, under Pennsylvania law, there is no provision for a jury trial in juvenile proceedings, a juvenile can avail himself of a jury trial in criminal proceedings. The Juvenile Act provides that any juvenile case can be transferred to criminal proceedings at the request of the child. 42 Pa.C.S. §6355(c). Thus, if a juvenile wants a jury trial, he can remove himself from the jurisdiction of the Juvenile Court. In this case, the juvenile did not make any such request. Fundamental fairness is satisfied by providing the opportunity for a jury trial to juveniles in criminal proceedings.

CONCLUSION

WHEREFORE, the Respondent respectfully requests that this Honorable Court deny the Petition for Writ of Certiorari.

Respectfully submitted,



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